

February 9, 2009

Courtney Feeley Karp  
Massachusetts Department of Energy Resources (DOER)  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**Re: *Green Communities Act* proposed final regulations – 225 CMR 14.00 – RPS I and 225 CMR 15.00 – RPS II**

Dear Ms. Karp:

The Nature Conservancy appreciates the opportunity to offer comment on the proposed final regulations promulgated by the Division of Energy Resources (DOER) 225 CMR 14.00 and 15.00 for Class I and II of the Renewable Portfolio Standard (RPS) included in *The Green Communities Act* (Chapter 169 of the Acts of 2008).

The Conservancy strongly supports the development of renewable energy resources as one of the measures needed to reduce carbon emissions and related effects on climate change and its impacts on biodiversity and human communities. Given the multiple stressors on the environment, many of which are exacerbated by climate change, the Conservancy urges that the RPS balance providing incentives for the development of renewable energy while maintaining and protecting our natural resources, such as habitat and biodiversity.

The Conservancy is limiting its comments in relation to Renewable Portfolio Standard (RPS) eligibility criteria for Class I and II hydropower, biomass and wind power.

**Hydropower**

The Conservancy would like to thank DOER for requiring hydropower facilities to meet appropriate and site-specific standards, including the standards developed by the Low Impact Hydropower Institute (LIHI). As the Conservancy mentioned in its earlier comments during the stakeholder process, LIHI certification provides protections developed in cooperation among federal and state agencies, dam owners and environmental protection organizations, including the Conservancy.

We would ask DOER to consider tightening up some of the language related to the certification of dams. For example, please review the regulatory definition of LIHI to ensure enough flexibility should any changes occur to LIHI (such as relocation), or should LIHI cease to offer certification, or exist.

Regarding 14.05 and 15.05 Eligibility Criteria for RPS Class I Class II Hydroelectric, we recommend the following:

- a. 14.05 and 15.05 (1)(a)6.d.f **LIHI Determination.** As written, the Department makes the final determination as to whether or not a unit meets the appropriate standards. We suggest that the Department, in consultation with the Relevant Hydroelectric Agencies, makes the determination.
- b. 14.05 and 15.05 (1)(a)6.d.g **Third party certification.** This section deals with facilities that are outside of the LIHI area. We suggest that the third party certification be acceptable to the Department *and* the Relevant Hydroelectric Agencies, as this would bring in the Department

of Fish and Game, the agency with the best capacity to assess third party certification in regards to river and fisheries health.

### **Biomass**

The Conservancy has three concerns related to biomass.

First, the Conservancy recommends that the definition of biomass fuel ensures sustainable harvests of the woodlands of the Commonwealth. The Conservancy understands and supports a balanced matrix of working woodlands and well-preserved forests. However, the definition of eligible biomass fuel should clarify that if forests are harvested for biomass in Massachusetts they should be sustainably-harvested, at a minimum consistent with the Forest Cutting Practices Act and ideally with the green certification standards and principles of the Forest Stewardship Council.

Second, the Conservancy recommends that when the Commonwealth provides incentives for the use of biomass fuel, it consider the net balance of carbon. In other words, the Commonwealth should evaluate and consider the carbon benefits gained from replacing fossil fuel with biomass versus the loss of tress used in carbon sequestration. The Conservancy would be willing to refer DOER to existing guidance.

Third, the Conservancy recommends that DOER work in conjunction with DFG and the Department of Environmental Protection regarding the regulation of process water discharges from biomass facilities to ensure protection of aquatic life.

### **Wind Power**

EEA should be applauded for fostering an open dialogue and process regarding the consideration of science-based facts regarding siting renewable power in the marine environment as part of the development of the Ocean Management Plan. As it stands now, it appears that all wind power would be eligible under the proposed RPS regulations. The Conservancy strongly supports the development of science based siting guidelines and criteria for evaluating terrestrial-based wind power and associated infrastructure to avoid, minimize and mitigate environmental impacts on state and regionally significant resources. The process for developing such guidelines should include stakeholders and the relevant environmental agencies.

Thank you again for the opportunity to provide these comments. Please free feel to contact me with any questions.

Sincerely,

Steve Long  
Director of Government Relations  
The Nature Conservancy  
Massachusetts Chapter

cc: Bob O'Connor, EEA Director of Land Policy  
Rick Sullivan, DCR Commissioner  
Mary Griffin, DFG Commissioner  
Laurie Burt, DEP Commissioner